

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
MOBIL OIL CORPORATION, )  
 )  
Appellant, )  
 )  
v. )  
 )  
STATE OF WASHINGTON, )  
DEPARTMENT OF ECOLOGY, )  
 )  
Respondent. )

PCHB No. 524

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

THIS MATTER being an appeal of a \$500.00 civil penalty assessed under RCW 90.48.350 for an alleged oil spill; having come on regularly for hearing before the Pollution Control Hearings Board on the 8th and 9th days of July, 1974, at Seattle, Washington; and appellant, Mobil Oil Corporation, appearing through its attorney, Stephen C. Kelly and respondent appearing through its attorney, Thomas C. Evans, Assistant Attorney General; and Board member present at the hearing being Chris Smith and presiding officer Bernard G. Lonctot and the Board having read the transcript considered the exhibits, closing arguments of counsel, records and files

1 herein and having entered on the 27th day of November, 1974, its proposed  
2 Findings of Fact, Conclusions of Law and Order, and the Board having  
3 served said proposed Findings, Conclusions and Order upon all parties  
4 herein by certified mail, return receipt requested and twenty days  
5 having elapsed from said service; and

6 The Board having received no exceptions to said proposed Findings,  
7 Conclusions and Order; and the Board being fully advised in the premises;  
8 now therefore,

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed  
10 Findings of Fact, Conclusions of Law and Order, dated the 27th day of  
11 November, 1974, and incorporated by this reference herein and attached  
12 hereto as Exhibit A, are adopted and hereby entered as the Board's  
13 Final Findings of Fact, Conclusions of Law and Order herein.

14 DONE at Lacey, Washington, this 7th day of January, 1975.

15 POLLUTION CONTROL HEARINGS BOARD

16  
17 Walt Woodward  
18 WALT WOODWARD, Chairman

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20 Chris Smith  
21 CHRIS SMITH, Member

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26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW  
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BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
MOBIL OIL CORPORATION,

Appellant,

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STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Respondent.

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FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

This matter, an appeal of a \$500.00 civil penalty assessed under RCW 90.48.350 for an alleged oil spill, came before Board member Chris Smith and presiding officer Bernard G. Lonctot, at a formal hearing in Seattle at 9:30 a.m., July 8 and 9, 1974.

Appellant appeared through its attorney, Stephen C. Kelly; Respondent appeared through its attorney, Thomas C. Evans, Assistant Attorney General. Sherri Darkow, Olympia court reporter, recorded the proceedings.

Witnesses were sworn and testified. Exhibits were offered and

EXHIBIT A

1 admitted. Counsel made closing arguments.

2 On the basis of the testimony heard, transcript read, exhibits  
3 examined and closing arguments by counsel, the Pollution Control Hearings  
4 Board makes these

5 FINDINGS OF FACT

6 I.

7 Mobil Oil Corporation, the Appellant herein, is the owner of a plant  
8 located at 2717 Federal Street, Everett, Washington. American  
9 Distributing Company (American) was the former lessee of the site.  
10 American is owned by the Appellant. At all pertinent times herein,  
11 Appellant owned and controlled a facility immediately adjacent to the  
12 American plant.

3 II.

14 On February 7 and 14, 1972, an oil sheen was noticed in the Port  
15 Gardner Bay water. The source of the oil was traced to the general vicinity  
16 of American's maintenance yard. After further investigation, Respondent  
17 found that the oil-saturated soil condition needed attention. Respondent  
18 notified both Mobil and American about the problem. Shortly thereafter,  
19 Appellant responded by replacing the contaminated crushed rock and performing  
20 some cleanup. Subsequently, the area again became contaminated with oil.  
21 Thus, on October 23, 1973, the area was visibly contaminated to the  
22 Respondent's inspector. After the ground condition was again brought to  
23 Appellant's attention, it took rapid measures to remove and replace the  
24 contaminated material.

25 III.

26 On October 23, 1973, Respondent's inspector saw an oil sheen in

27 FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 Port Gardner Bay. The oil was traced to a drainage system in an area near  
2 the general vicinity of American's plant which was then in the custody and  
3 control of Mobil. There are other sources of oil which enter this drainage  
4 system for which Appellant is not responsible. Respondent could not show  
5 that the offending oil originated from Mobil's property, and in particular,  
6 its catch basins. Rather, it is just as likely, if not more likely, that  
7 the oil came from other contaminant sources not caused by the Appellant.

8 Additionally, Respondent has not shown, by a preponderance of the  
9 evidence, that oil entered the waters of the state either by percolation  
10 through the soil or by seepage through the pipes of the sewer system.

#### 11 IV.

12 Any Conclusion of Law hereinafter deemed to be a Finding of Fact  
13 is herewith adopted as same.

14 From these Findings, the Pollution Control Hearings Board comes to  
15 these

#### 16 CONCLUSIONS OF LAW

##### 17 I.

18 There was a violation of RCW 90.48.320 on October 23, 1973 to wit:  
19 that oil was present in the waters of the state. However, Respondent has  
20 failed to prove that the oil found in Port Gardner Bay was intentionally or  
21 negligently discharged, or caused or permitted, by the Appellant as required  
22 by RCW 90.48.350. Specifically, the Respondent has not shown causation  
23 in fact.

##### 24 II.

25 Any Finding of Fact which should be deemed a Conclusion of Law is  
26 hereby adopted as such.

27 FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 Therefore, the Pollution Control Hearings Board issues this

2 ORDER

3 The Order assessing the \$500.00 civil penalty is reversed.

4 DONE at Lacey, Washington this 27<sup>th</sup> day of November, 1974.

5 POLLUTION CONTROL HEARINGS BOARD

6 Walt Woodward  
7 WALT WOODWARD, Chairman

8  
9 W. A. GISSBERG, Member  
(Did Not participate in this appeal)

10 Chris Smith  
11 CHRIS SMITH, Member

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26 FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW AND ORDER